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111 2011 U.S. DISTRICT COURT
121 CENTRAL DISTRICT OF CALIFORNIA

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 National Credit Union) Case No.: CV10-01597 GW (MANx)
14 Administration Board, as Liquidating)
15 Agent for Western Corporate Federal) Answer and Counterclaims of
16 Credit Union,) Defendant Todd M. Lane to
17 Plaintiff,) Second Amended Complaint
18 vs.)
19) Jury Trial Demanded
20 Robert A. Siravo, Todd M. Lane,)
21 Robert J. Burrell, Thomas E.) Honorable George H. Wu
22 Swedberg, Timothy T. Sidley,) Courtroom: 10
23 Robert H. Harvey, Jr., William)
24 Cheney, Gordon Dames, James P.)
25 Jordan, Timothy Kramer, Robin J.)
26 Lentz, John M. Merlo, Warren)
27 Nakamura, Brian Osberg, David)
28 Rhamy and Sharon Updike,)
29 Defendants.)
30)
31)
32)
33)
34)
35)

Defendant Todd M. Lane (“Lane”) answers the numbered allegations in
and provides affirmative defenses to the Second Amended Complaint of Plaintiff
National Credit Union Administration Board as Liquidating Agent for Western
Corporate Federal Credit Union (“Plaintiff”), Doc. 116, filed February 22, 2011.

5 Except where expressly admitted, Lane denies all the allegations in the
6 Second Amended Complaint.

Jurisdiction and Venue

8 1. Lane admits that WesCorp was a credit union with its corporate
9 offices located in San Dimas, California, that WesCorp was placed into
10 conservatorship by the NCUA Board on March 19, 2009, and that WesCorp was
11 placed into involuntary liquidation on October 1, 2010. The remainder of
12 Paragraph 1 contains legal conclusions, to which no response is required.

13 2. Paragraph 2 contains legal conclusions, to which no response is
14 required. To the extent the allegations require a response, they are denied.

15 3. Paragraph 3 contains legal conclusions, to which no response is
16 required. To the extent the allegations require a response, they are denied.

17 4. Paragraph 4 contains legal conclusions, to which no response is
18 required. To the extent the allegations require a response, they are denied.

19 5. Paragraph 5 contains legal conclusions, to which no response is
20 required. To the extent the allegations require a response, they are denied.

21 6. Lane admits that the NCUA is the liquidating agent for WesCorp.

22 7. Lane admits that Robert A. Siravo (“Siravo”) was the President and
23 CEO of WesCorp from May 1, 2002 to or about March 20, 2009, and that he is
24 a resident of California. Lane denies the remaining allegations of Paragraph 7.

25 ||| 8. Lane admits the allegations of Paragraph 8.

26 9. Lane admits that Robert J. Burrell (“Burrell”) served as Executive Vice
27 President and as the Chief Investment Officer for WesCorp. Lane lacks

1 knowledge or information sufficient to form a belief as to the truth of the
2 remaining allegations of Paragraph 9 and on that basis denies those allegations.

3 10. Lane admits that Timothy T. Sidley (“Sidley”) served as Vice
4 President for Risk Assessment and as Chief Risk Officer in charge of investment
5 credit services. Lane lacks knowledge or information sufficient to form a belief as
6 to the truth of the remaining allegations of Paragraph 10 and on that basis denies
7 those allegations.

8 11. Lane admits that Thomas E. Swedberg (“Swedberg”) was Vice
9 President of Human Resources and Vice President of Strategic Planning and
10 Organizational Development. Sidley lacks knowledge or information sufficient to
11 form a belief as to the truth of the remaining allegations of Paragraph 11 and on
12 that basis denies those allegations.

13 12. Lane admits that Robert H. Harvey, Jr. (“Harvey”) was a director and
14 the Chairman of the WesCorp board of directors, and that he is a resident of the
15 state of Washington. Lane lacks knowledge or information sufficient to form a
16 belief as to the truth of the remaining allegations of Paragraph 12 and on that
17 basis denies those allegations.

18 13. Lane admits that James P. Jordan (“Jordan”) was a member of the
19 WesCorp board of directors and was the Vice Chairman of the WesCorp board.
20 Lane lacks knowledge or information sufficient to form a belief as to the truth of
21 the remaining allegations of Paragraph 13 and on that basis denies those
22 allegations.

23 14. Lane admits that Timothy Kramer (“Kramer”) was a member of the
24 WesCorp board of directors and served as the Secretary and Treasurer of the
25 WesCorp board. Lane lacks knowledge or information sufficient to form a belief
26 as to the truth of the remaining allegations of Paragraph 14 and on that basis
27 denies those allegations.

28

1 15. Lane admits that Robin J. Lentz (“Lentz”) was a member of the
2 WesCorp board of directors. Lane lacks knowledge or information sufficient to
3 form a belief as to the truth of the remaining allegations of Paragraph 15 and on
4 that basis denies those allegations.

5 16. Lane admits that John M. Merlo (“Merlo”) was a member of the
6 WesCorp board of directors and that he is a resident of California. Lane lacks
7 knowledge or information sufficient to form a belief as to the truth of the
8 remaining allegations of Paragraph 16 and on that basis denies those allegations.

9 17. Lane admits that Gordon Dames (“Dames”) was a member of the
10 WesCorp board of directors. Lane lacks knowledge or information sufficient to
11 form a belief as to the truth of the remaining allegations of Paragraph 17 and on
12 that basis denies those allegations.

13 18. Lane admits that William Cheney (“Cheney”) was a member of the
14 WesCorp board of directors. Lane lacks knowledge or information sufficient to
15 form a belief as to the truth of the remaining allegations of Paragraph 18 and on
16 that basis denies those allegations.

17 19. Lane admits that Warren Nakamura (“Nakamura”) was a member of
18 the WesCorp board of directors. Lane lacks knowledge or information sufficient
19 to form a belief as to the truth of the remaining allegations of Paragraph 19 and
20 on that basis denies those allegations.

21 20. Lane admits that Brian Osberg (“Osberg”) was a member of the
22 WesCorp board of directors. Lane lacks knowledge or information sufficient to
23 form a belief as to the truth of the remaining allegations of Paragraph 20 and on
24 that basis denies those allegations.

25 21. Lane admits that David Rhamy (“Rhamy”) was a member of the
26 WesCorp board of directors. Lane lacks knowledge or information sufficient to
27 form a belief as to the truth of the remaining allegations of Paragraph 21 and on
28 that basis denies those allegations.

1 22. Lane admits that Sharon Updike (“Updike”) was a member of the
2 WesCorp board of directors. Lane lacks knowledge or information sufficient to
3 form a belief as to the truth of the remaining allegations of Paragraph 22 and on
4 that basis denies those allegations.

5 23. Lane admits the allegations of Paragraph 23.

6 24. Lane admits that WesCorp’s Asset and Liability Committee
7 (“ALCO”) had oversight responsibility for WesCorp’s asset liability management
8 process, including investments. Lane lacks knowledge or information sufficient
9 to form a belief as to the truth of the remaining allegations of Paragraph 24 and
10 on that basis denies those allegations, except to the extent they reference the
11 contents of WesCorp’s corporate policies, which speak for themselves. Lane
12 refers to WesCorp’s corporate policies for their contents and denies any
13 characterization inconsistent with their terms.

14 25. Lane lacks knowledge or information sufficient to form a belief as to
15 the truth of the allegations of Paragraph 25 and on that basis denies those
16 allegations.

17 26. Lane admits that board members attended ALCO meetings and
18 received ALCO materials along with their monthly board packages. Lane lacks
19 knowledge or information sufficient to form a belief as to the truth of the
20 remaining allegations of Paragraph 26 and on that basis denies those allegations.

21 27. Lane admits that WesCorp’s budget was reviewed by the budget
22 committee, which recommended it before it was approved by the board. Lane
23 lacks knowledge or information sufficient to form a belief as to the truth of the
24 remaining allegations of Paragraph 27 and on that basis denies those allegations.

25 28. Paragraph 28 contains legal conclusions, to which no response is
26 required. To the extent the allegations require a response, they are denied.

27 29. Paragraph 29 contains legal conclusions, to which no response is
28 required.

Summary of Claims

30. Lane admits that WesCorp was a non-profit corporate credit union, that its members were credit unions, and that it provided its members with banking and investment services for their funds. The remaining allegations of Paragraph 30 contain legal conclusions, to which no response is required. To the extent the remaining allegations require a response, they are denied.

31. Lane admits that WesCorp was a leading corporate federal credit union and provided its members with banking and investment services for their funds. Lane also admits that Siravo became President and CEO of WesCorp in 2002. Lane denies the remaining allegations of Paragraph 31.

32. Lane admits that WesCorp invested its members' funds and borrowed funds in securities, including private label mortgage backed securities ("MBS"), including MBS that were not guaranteed by the United States or its agencies. Lane denies the remaining allegations of Paragraph 32.

33. Lane lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 and on that basis denies them.

34. Lane admits that WesCorp used income from its investments to pay operating expenses. Lane lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 34 and on that basis denies those allegations.

35. Lane denies the allegations of Paragraph 35.

36. Lane admits that WesCorp invested in MBS, including MBS based on reduced-documentation Option ARM loans. Lane lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 36 and on that basis denies those allegations.

37. Lane denies the allegations of Paragraph 37.

38. Lane admits that WesCorp invested in MBS, including MBS based on reduced documentation Option ARM loans. Lane lacks knowledge or

1 information sufficient to form a belief as to the remaining allegations of
2 Paragraph 38 and on that basis denies those allegations.

3 39. Lane admits that WesCorp purchased AAA-rated and AA-rated
4 MBS that were underwritten by the world's leading investment banks and denies
5 the remaining allegations of Paragraph 39.

6 40. Lane lacks knowledge or information to form a belief as to the truth
7 of the allegations of Paragraph 40, and on that basis denies them, except to the
8 extent they reference the contents of WesCorp's 2009 financial statements, which
9 speak for themselves. Lane refers to WesCorp's 2009 financial statements for
10 their contents and denies any characterization inconsistent with their terms.

11 41. Lane lacks knowledge or information sufficient to form a belief as to
12 the truth of the allegations of Paragraph 41, and on that basis denies those
13 allegations.

14 42. Lane admits that he and Siravo executed an agreement, which speaks
15 for itself. Lane refers to the agreement for its contents and denies any
16 characterization inconsistent with its terms. Lane lacks knowledge or
17 information to form a belief as to the truth of the remaining allegations of
18 Paragraph 42, and on that basis denies those allegations.

19 43. Lane denies the allegations of Paragraph 43.

20 **Factual Allegations**

21 **The Federal Credit Union System**

22 44. Lane admits that the federal credit union system is a three-tier system
23 consisting of (1) one wholesale corporate credit union (U.S. Central Federal
24 Credit Union); (2) retail corporate credit unions; and (3) "natural person" credit
25 unions. Lane further admits that the wholesale corporate credit union provides
26 services to the retail corporate credit unions, while the retail corporate credit
27 unions provide services to both federally-chartered and state-chartered natural
28 person credit unions. Lane lacks knowledge or information sufficient to form a

1 belief as to the truth of the remaining allegations of Paragraph 44 and on that
2 basis denies those allegations.

3 45. Lane admits that WesCorp was a retail corporate credit union. Lane
4 lacks knowledge or information sufficient to form a belief as to the truth of the
5 remaining allegations of Paragraph 45 and on that basis denies those allegations.

6 46. Lane admits the allegations of Paragraph 46.

7 47. Lane admits that retail corporate credit unions provide services and
8 support to their natural person credit union members. Lane admits that retail
9 corporate credit unions offer their natural person credit unions banking and
10 investment services for their funds, and that these services may include settlement
11 of transactions such as checks, ATM and credit card transactions and wire
12 transfers, and that they allow their members to borrow funds. Lane lacks
13 knowledge or information sufficient to form a belief as to the truth of the
14 remaining allegations of Paragraph 47 and on that basis denies those allegations.

15 48. Lane lacks knowledge or information sufficient to form a belief as to
16 the truth of the allegations of Paragraph 48 and on that basis denies them, except
17 to the extent they reference the contents of WesCorp's website, which speaks for
18 itself. Lane refers to WesCorp's website for its contents and denies any
19 characterization inconsistent with its terms.

20 49. Lane admits that WesCorp had by-laws, which speak for themselves.
21 Lane refers to WesCorp's bylaws for their contents and denies any
22 characterization inconsistent with their terms.

23 50. Lane lacks knowledge or information sufficient to form a belief as to
24 the truth of the allegations of Paragraph 50 and on that basis denies them.

25 51. Lane admits the allegations of Paragraph 51.

26 **The Officer Defendants' Responsibilities and Duties**

27 52. Lane lacks knowledge or information sufficient to form a belief as to
28 the truth of the allegations of Paragraph 52 and on that basis denies those

1 allegations, except to the extent the allegations reference the contents of
2 WesCorp's by-laws and corporate policies, which speak for themselves. Lane
3 refers to WesCorp's by-laws and corporate policies for their contents and denies
4 any characterization inconsistent with their terms.

5 53. Lane admits that Siravo served as President and CEO of WesCorp,
6 and that he had responsibilities for overseeing WesCorp's operations and
7 investments. Lane denies the remaining allegations of Paragraph 53.

8 54. Lane admits that Siravo served as President and CEO of WesCorp.
9 The remaining allegations of Paragraph 54 contain legal conclusions, to which no
10 response is required. To the extent that a response is required, they are denied.

11 55. Lane admits that he served as Chief Financial Officer of WesCorp
12 and had responsibilities for WesCorp's financial statements, financial operations,
13 and budgets. Lane denies the remaining allegations of Paragraph 55.

14 56. Lane admits that Burrell served as Chief Investment Officer for
15 WesCorp and had responsibilities for WesCorp's investments and for supervising
16 WesCorp's Investment Department. Lane lacks knowledge or information
17 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
18 56 and on that basis denies those allegations.

19 57. Lane denies the allegations of Paragraph 57.

20 58. Lane admits that Sidley served as Vice President of Risk Assessment,
21 and that the Director of Investment Credit Services reported to Sidley. Lane
22 further admits that Sidley had responsibilities with respect to WesCorp's
23 investment credit policies and procedures. Lane lacks knowledge or information
24 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
25 58 and on that basis denies those allegations.

26 59. Lane denies that the Asset/Liability Staff Committee ("ALCS") had
27 the responsibilities as described in Paragraph 59. Lane lacks knowledge or
28

1 information sufficient to form a belief as to the truth of the remaining allegations
2 of Paragraph 59 and on that basis denies those allegations.

3 60. Lane admits that Siravo, Burrell and Lane served as voting members
4 of ALCO and ALSC, and that Sidley served as a non-voting member of ALSC
5 and a staff liaison to ALCO. Lane denies the remaining allegations of Paragraph
6 60.

7 **WesCorp's Era of Growth**

8 61. Lane lacks knowledge or information sufficient to form a belief as to
9 the truth of the allegations of Paragraph 61 and on that basis denies them.

10 62. Lane admits that Sirvo became President and CEO of WesCorp in
11 2002. Lane lacks knowledge or information sufficient to form a belief as to the
12 remaining allegations of Paragraph 62 and on that basis denies those allegations.

13 63. Lane lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations of Paragraph 63 and on that basis denies them.

15 64. Lane lacks knowledge or information sufficient to form a belief as to
16 the truth of the allegations of Paragraph 64 and on that basis denies them.

17 65. Lane lacks knowledge or information sufficient to form a belief as to
18 the truth of the allegations of Paragraph 65 and on that basis denies them.

19 66. Lane lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations of Paragraph 66 and on that basis denies them.

21 67. Lane admits that WesCorp invested in MBS, including private label
22 MBS that had higher yields than MBS issued by government agencies. Lane
23 lacks knowledge or information sufficient to form a belief as to the truth of the
24 remaining allegations of Paragraph 67 and on that basis denies those allegations.

25 68. Lane lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations of Paragraph 68 and on that basis denies them, except
27 to the extent the allegations reference the contents of WesCorp's corporate

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1 policies, which speak for themselves. Lane refers to WesCorp's corporate policies
2 for their contents and denies any characterization inconsistent with their terms.

3 69. Lane lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations of Paragraph 69 and on that basis denies them.

5 70. Lane admits that his compensation and the compensation of other
6 WesCorp executives increased from 2002 to 2008, but lacks knowledge or
7 information sufficient to form a belief as to the truth of the remaining allegations
8 of Paragraph 70 and on that basis denies those allegations.

9 **WesCorp's Private Label MBS Investments**

10 71. Lane lacks knowledge or information sufficient to form a belief as to
11 the truth of the allegations of Paragraph 71 and on that basis denies them.

12 72. Lane lacks knowledge or information sufficient to form a belief as to
13 the truth of the allegations of Paragraph 72 and on that basis denies them.

14 73. Lane admits that WesCorp invested in AAA-rated and AA-rated
15 private label MBS. Lane lacks knowledge or information sufficient to form a
16 belief as to the truth of the remaining allegations of Paragraph 73 and on that
17 basis denies those allegations, except to the extent the allegations reference the
18 contents of the NCUA's regulations and WesCorp's investment policies, which
19 speak for themselves. Lane refers to the NCUA's regulations and WesCorp's
20 investment policies for their contents and denies any characterization inconsistent
21 with their terms.

22 74. Lane admits that between 2004 and 2007 WesCorp invested in MBS,
23 including Collateralized Debt Obligations ("CDOs") and Option ARM MBS.
24 Lane lacks knowledge or information sufficient to form a belief as to the truth of
25 the remaining allegations of Paragraph 74 and on that basis denies those
26 allegations.

27 75. Lane admits that MBS are shares in a pool of mortgages and CDOs
28 are shares in a pool of MBS. Lane also admits that there are risks associated with

1 investments in CDOs. Lane lacks knowledge or information sufficient to form a
2 belief as to the truth of the remaining allegations of Paragraph 75 and on that
3 basis denies those allegations

4 76. Lane admits that WesCorp purchased CDOs. Lane lacks knowledge
5 or information sufficient to form a belief as to the truth of the remaining
6 allegations of Paragraph 76 and on that basis denies those allegations.

7 77. Lane admits that Option ARM MBS are investments in Option
8 ARM mortgages, and that Option ARM mortgages have payment terms and can
9 have a negative amortization. Lane lacks knowledge or information sufficient to
10 form a belief as to the remaining allegations of Paragraph 77 and on that basis
11 denies those allegations.

12 78. Lane lacks knowledge or information sufficient to form a belief as to
13 the truth of the allegations of Paragraph 78 and on that basis denies them.

14 79. Lane lacks knowledge or information sufficient to form a belief as to
15 the truth of the allegations of Paragraph 79 and on that basis denies them.

16 80. Lane admits that WesCorp invested in Option ARM MBS, including
17 Option ARM MBS that included reduced-documentation Option ARM loans.
18 Lane lacks knowledge or information sufficient to form a belief as to the truth of
19 the remaining allegations of Paragraph 80 and on that basis denies those
20 allegations.

21 81. Lane admits that MBS investments were sold in tranches and that
22 WesCorp invested in some AAA-rated and AA-rated MBS that paid a higher
23 yield than other AAA-rated and AA-rated MBS. Lane lacks knowledge or
24 information sufficient to form a belief as to the truth of the allegations of
25 Paragraph 81 and on that basis denies those allegations.

26 82. Lane admits that WesCorp invested in AA-rated MBS. Lane lacks
27 knowledge or information sufficient to form a belief as to the truth of the
28 remaining allegations of Paragraph 82 and on that basis denies those allegations.

1 83. Lane lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations of Paragraph 83 and on that basis denies them.

3 84. Lane admits that WesCorp invested in AAA-rated Option ARM
4 MBS. Lane lacks knowledge or information sufficient to form a belief as to the
5 truth of the remaining allegations of Paragraph 84 and on that basis denies those
6 allegations.

7 **WesCorp's Budgets**

8 85. Lane admits the allegations of Paragraph 85.

9 86. Paragraph 86 contains legal conclusions, to which no response is
10 required. To the extent the allegations require a response, they are denied.

11 87. Paragraph 87 contains legal conclusions, to which no response is
12 required. To the extent the allegations require a response, Lane lacks knowledge
13 or information sufficient to form a belief as to the truth of the allegations of
14 Paragraph 87 and on that basis denies them.

15 88. The allegations of Paragraph 88 reference the contents of WesCorp's
16 budgets and an executive summary, which speak for themselves. Lane refers to
17 WesCorp's budgets and the executive summary for their contents and denies any
18 characterization inconsistent with their terms. To the extent that the allegations
19 of Paragraph 88 refer to facts beyond those documents, Lane denies them.

20 89. Lane denies the allegations of Paragraph 89.

21 90. Lane admits that when he was WesCorp's CFO, WesCorp's
22 management proposed budgets that were considered and recommended by the
23 Budget Committee and adopted by WesCorp's Board of Directors, and that he
24 worked on the budgets with Siravo and Burrell. Lane lacks knowledge or
25 information sufficient to form a belief as to the truth of the remaining allegations
26 of Paragraph 90 and on that basis denies those allegations, except to the extent
27 the allegations reference the contents of WesCorp's budgets, which speak for
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1 themselves. Lane refers to WesCorp's budgets for their contents and denies any
2 characterization inconsistent with their terms.

3 91. Lane denies the allegations of Paragraph 91.

4 92. Lane lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations of Paragraph 92 and on that basis denies them.

6 93. Lane lacks knowledge or information sufficient to form a belief as to
7 the truth of the allegations of Paragraph 93 and on that basis denies them.

8 94. Lane lacks knowledge or information sufficient to form a belief as to
9 the truth of the allegations of Paragraph 94, and on that basis denies them, except
10 to the extent they reference the contents of WesCorp's budgets, which speak for
11 themselves. Lane refers to WesCorp's budgets for their contents and denies any
12 characterization inconsistent with their terms.

13 95. The allegations of Paragraph 95 reference the contents of materials
14 supplied to the Budget Committee about budgets, which speak for themselves.
15 Lane refers to these materials for their contents and denies any characterization
16 inconsistent with their terms. To the extent that the allegations of Paragraph 95
17 go beyond those documents, Lane lacks knowledge or information sufficient to
18 form a belief as to the truth of the allegations of Paragraph 95, and on that basis
19 denies them.

20 96. Lane admits that directors attended ALCO meetings. Lane lacks
21 knowledge or information sufficient to form a belief as to the truth of the
22 remaining allegations of Paragraph 96 and on that basis denies them.

23 97. Lane lacks knowledge or information sufficient to form a belief as to
24 the truth of the allegations of Paragraph 97 and on that basis denies them, except
25 to the extent they reference the contents of WesCorp's ALCO books, which
26 speak for themselves. Lane refers to WesCorp's ALCO books for their contents
27 and denies any characterization inconsistent with their terms.

28